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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/268,892 03/16/99 HARTFIELD

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EXAMINER

CRYOVAC INC  
P O BOX 464  
DUNCAN SC 29334

NGUYEN, K

ART UNIT

PAPER NUMBER

2881

DATE MAILED:

10/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/268,892

Applicant(s)

HARTFIELD

Examiner

L. NGUYEN

Group Art Unit

2881

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## P r i d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 08-20-01
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-10, 13-15 and 17-37 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-10, 13-15 and 17-37 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Applicati n Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Pri rity under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachm nt(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 11
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Acti n Summary

***Rejection Under 35 U.S.C. 112, Second Paragraph***

Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 recites the limitation "the one or more dosimetric agents" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Rejection Under 35 U.S.C. 102(b)***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-8, 10, 13-15, 17-23, 26 and 36 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Regulla et al. (Dosimetry by ESR spectroscopy of Alanine).

Claims 1-5, 7-10, 13-15, 17-23, 27, 29-30, 32 and 35-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Morita et al. (See the reasons as indicated in the previous office action dated April 16, 2001 in Paper No. 7).

***Rejection Under 35 U.S.C. 103(a)***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 24-26, 28, 31 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morita et al.

Morita et al. disclose all the features, as discussed in the previous office action dated April 16, 2001 in Paper No. 7, except a food product or a beverage product as recited in claims 6 and 26; a sugar as recited in claim 24; an amine salt of an organic acid as recited in claim 25; ethylene/C<sub>3</sub>-C<sub>20</sub> alpha-olefin copolymer as recited in claim 28; ethylene/C<sub>1</sub>-C<sub>20</sub> ester of (meth)acrylic acid copolymer as recited in claim 31; polyamide as recited in claim 33; and ionomer as recited in claim 34.

Using the authenticating agent such as the sugar or the amine salt of an organic acid in the food product or the beverage product is considered to be obvious variation in design, since it well known in the art to use such agents in the food or beverage product for testing the product, thus would have been obvious to one skilled in the art to use the authenticating agent such as the sugar or the amine salt of an organic acid in the food product or the beverage product in the Morita et al. dosimeter for testing the product.

Using the material such as the ethylene/C<sub>3</sub>-C<sub>20</sub> alpha-olefin copolymer, the ethylene/C<sub>1</sub>-C<sub>20</sub> ester of (meth)acrylic acid copolymer, the polyamide or the ionomer for packaging the authenticating agent is also considered to be obvious variation in design, since it well known in the art to use the material such as the ethylene/C<sub>3</sub>-C<sub>20</sub> alpha-olefin copolymer, the ethylene/C<sub>1</sub>-C<sub>20</sub>

ester of (meth)acrylic acid copolymer, the polyamide or the ionomer in the Morita et al. dosimeter for packaging the authenticating agent.

Applicant's arguments filed on August 20, 2001 have been fully considered but they are not persuasive.

Applicant argued that both Regulla et al. and Morita et al. fail to disclose a package for containing an authenticating agent.

This argument is not persuasive. Regulla et al. disclose the amino acids or alanine which are packed in the form of the sample units (see fig. 15); and Morita et al. disclose the molded product contains alanine (see col. 3, line 55) and the rubber and alanine which are filmed to form a sheet (see col. 4, lines 1-3 and 45-48). Further, the alanine is the powder; therefore it is needed to form an unit for a test piece. Since the term "the package" is generally defined as an unit for containing elements.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

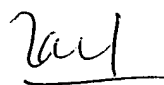
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner *Kiet T. Nguyen* whose telephone number is (703) 308-4855.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

Papers related to Art Unit 2881 applications **only** may be submitted to Art Unit 2881 by facsimile transmission. Any transmission not to be considered an official response must be clearly marked "DRAFT". The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Art Unit 2881 Fax Center number is (703) 308-7723.

*K.T.N/Primary*  
October 10, 2001

  
KIET T. NGUYEN  
PRIMARY EXAMINER